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JUL 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of the Cable	)	
Television Consumer Protection	)	MM Docket No. 92-266
and Competition Act of 1992	)	
	)	
Rate Regulation	)	

COMMENTS OF THE MEDIUM-SIZED OPERATORS GROUP ON PETITIONS FOR RECONSIDERATION

The medium-sized operators group[1] ("the Group"), by its attorneys, and pursuant to Section 1.429 of the Federal Communications Commission's ("FCC or Commission") rules, hereby submits the following comments on the Petitions for Reconsideration of the Commission's Report & Order, FCC 93-177.

of the members have filed Petitions for Reconsideration individually.[3] Thus, each of the members has standing to submit these comments pursuant to Section 1.106(b)(1) of the Commission's rules.

The Group operates cable television systems which together represent more than 25% of the total cable television subscribers in the United States. The Group's members represent a diverse cross-section of the cable television industry, serving both urban and rural areas throughout the country. However, the benchmark rate regulations raise serious concerns which are shared by all of the Group's members, and which were raised by the majority of all petitioners in this Reconsideration proceeding.

The Group supports many of the points made by certain petitioners. The benchmarks, as currently crafted, leave many cable operators with no alternative but to pursue cost-of-service showings in order to receive compensatory rates. Using cost-of-service showings as the primary method of rate regulation would be an administrative nightmare for the Commission, local franchise authorities, and cable operators. Such a result was

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[2](...continued)
Partners, Jones Spacelink, Ltd., Lenfest Communications, Inc., Prime Cable, Simmons Communications, Inc., Star Cablevision Group, Triax Communications Corp.

[3] Petitions for Reconsideration were filed by: Cablevision Industries Corporation; Falcon Cable TV; InterMedia Partners; Jones Spacelink, Ltd.; Marcus Cable; and Star Cablevision Group and Triax Communications Corp. (as members of the Coalition of Small System Operators).

not intended by the Commission in adopting a benchmark regulatory scheme.[4]

The Group believes that by eliminating certain anomalies in the benchmark rate formula, benchmark rate regulation can be implemented fairly, and without the need for extensive cost-of-service showings. It is the Group's intention to offer suggestions and proposals which may alleviate some of the problems with the current benchmark regulatory scheme. To this end, the Group is working with economists and financial analysts from Ernst & Young, and is collecting data from the Group's members to provide specific examples of the significant economic hardship placed on cable operators and to illustrate some of the unintended effects of the Commission's benchmark tables.

The specific areas of concern to be addressed by the Group are: (1) the failure of the current benchmark scheme to account for the costs of upgrades and rebuilds; (2) the need for an exemption from rate regulation for small systems with less than 1,000 subscribers, regardless of ownership; (3) the need to make adjustments to the benchmark rates to account for the impact of home density on cable operators' costs; (4) the unintended effects of "tier-neutral" regulation; (5) the need to adjust the benchmarks for systems serving Alaska and Hawaii to account for the extremely high cost of operating in those areas; and (6) the

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[4] Report & Order, at ¶ 185-188 (discussing the advantages of benchmark regulation over cost-of-service regulation).

problems associated with regulating all equipment provided by cable operators to customers' homes. The attached letter to Chairman Quello outlines the Group's specific concerns in each of these areas.

This Group plans to submit to the Commission, on or before August 2, 1993 (the reply date in this Reconsideration proceeding), detailed evidence of the problems identified above and illustrative examples of some of the unintended effects under the current benchmark scheme, and to offer proposals to alleviate these concerns. The Group fully supports a benchmark approach to cable rate regulation, and is striving to assist the Commission in making the benchmarks a workable alternative to cost-of-service showings. The public interest will be served by permitting the Group to more fully develop the public record. Filing supplemental comments in this fashion will not delay the Commission's action in this proceeding. First, all of the areas to be addressed in more detail by the Group will be responsive to issues already raised in many of the Petitions for

service standards.[5] Therefore, to the extent that parties may not have sufficient time to comment on the information to be submitted by the Group on Reconsideration, there will be an opportunity to do so in the cost-of-service proceeding.

Respectfully submitted,

THE MEDIUM-SIZED OPERATORS GROUP

By: _____

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Dated: July 21, 1993

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[5] Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation

INTERMEDIA PARTNERS

Leo J. Hindery, Jr.
Managing General Partner

July 6, 1993

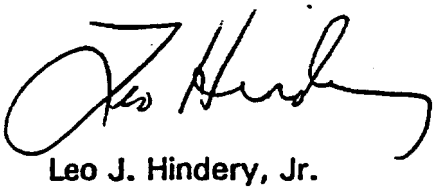
The Honorable James H. Quello
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Dear Chairman Quello:

Further to my letter of June 28 and your kind offer to consider the suggestions of myself and my several associates regarding the pending Cable Act rules and regulations, I am, with your indulgence, enclosing a summary of our specific recommendations. As you recall, these recommendations reflect not only the views of the several cable company chief executives with whom you met on June 24, but

We hope you will consider our few specific suggestions and adopt them. Above all else, we look forward to continuing our dialogue with you and the Commission staff, and we remain grateful for your fair consideration of our views as all of us together try to achieve a workable response to the Commission's rulemaking mandate.

Sincerely yours,



Leo J. Hindery, Jr.

cc: Brian F. Fontes, Chief of Staff
Jonathan Cohen, Esq.

LJH/lp

Enclosure

7-06-93

Comments Regarding Rate
Regulation and Cost-of-Service Rules

In the context of reconsideration, a group of mid-sized cable television system operators, encompassing a significant percentage of the cable subscribers in the United States, believe that seven changes should be made in the benchmark rules and related procedures, which would correct certain inequities, preserve the industry's vitality and commitment to improved and expanded service and yet respond to the mandates of Congress and the Commission for certain restraints on the industry. Each of these seven changes is the subject of one or more of the recent petitions for reconsideration of the proposed rate regulation rules, and this document is intended to supplement those petitions.

In summary, we believe that:

1. The formulas employed in the Commission's benchmark method, and the associated rates per channel, should be adjusted upward (or some other cost recovery method should be permitted) in order to compensate for both the direct programming costs and the significant system rebuild costs incurred in adding channels.

2. Small systems with less than 1,000 subscribers in a franchise area should be exempt from rate regulation, regardless of ownership, as suggested by the 1992 Cable Act.

3. The benchmark rates should be adjusted upward for systems with a density of less than 50 homes passed per plant mile of cable, to compensate for the materially higher operating costs associated with such systems and for the higher per-home construction and rebuild costs.

4. Regulated equipment should include only those converters which are used exclusively or primarily to access the basic service tier.

5. There should be different benchmarks for basic services (i.e., broadcast and PEG channels) and cable programming services, in recognition of their fundamentally different underlying operating expense structures. Otherwise, the proposed "tier neutral" concept will force a significant number of systems into cost-of-service showings because the basic tier [illegible] often not compensatory under this approach. The 1992 Cable-

6. The benchmark rates should be adjusted upward for systems located in the extremely high cost-of-living areas of Alaska and Hawaii. (Alternatively, the pending cost-of-service rules could provide for a pass through of these systems' extraordinary operating expenses.)

7. Those cable systems with less than 30% penetration should remain part of the Commission's survey of systems used in determining the benchmark formulas, and they should not be excluded as some have suggested. Congress explicitly defined the indicia of effective competition to include penetration of less than 30%.

We recognize that some hard evidence needs to be developed to support some of these suggested changes. We are still working on this material, and in the meantime, we would offer the following broad comments in support of the four suggestions which presently warrant some elaboration, as follows.

To begin, we are deeply concerned that the benchmark method, with its virtually flat incremental rate composition beyond 25 satellite channels, offers no incentive for operators to undertake rebuilds to add channels and improve the technology available to all subscribers. It will not even induce a la carte programming offerings, as some commentators have suggested -- rather, it virtually compels operators which have not yet rebuilt their systems, which is the substantial majority, to "freeze" their systems, since as indicated in a letter to the Commission from the 18 primary bank lenders to the industry dated June 21, 1993, there will simply be no capital available to such operators for these rebuilds unless the benchmarks provide compensation in the form of higher rates for a greater number of channels. Without rebuilds, cable customers will not have access to more channels and better technology, cable operators will not be able to compete with DBS and the recent trend toward ownership concentration will accelerate, as small and medium sized operators are forced out of the industry.

The average cable programming service has a direct cost today to an operator of about twenty cents ($0.20) per subscriber per month, with some services costing well in excess of a dollar. At the same time, it costs an operator about $130 to $250 per subscriber in capital expenditures to add an additional channel, using an electronic upgrade which is the most economic form of rebuild, and full rebuilds can run as high as $600 a subscriber. And yet from about 25 satellite channels upward, the benchmark tables add only about four cents ($0.04) of rate increase per satellite channel added. This $0.04 does not cover, at all, the cost of programming for the channel or the capital costs of adding that channel, nor does it afford a return on such capital cost investment. If the Commission chooses not to account for rebuild costs in the benchmarks, then it should at least establish a "surcharge" mechanism based on actual rebuild costs amortized over an appropriate period, perhaps eight (8) years.

(We believe the reasons that the Commission's surveys apparently did not identify the need for or the appropriateness of more steeply increasing the per channel rates within the so-called grids are that (a) the surveys did not focus at all on the systems's costs and profitability and (b) the surveys did not identify the enormous future capital cost differences between systems either initially constructed with 450 Mhz capacity or already rebuilt and those which have yet to be rebuilt.)

With regard to the suggested exclusion of systems with less than 1,000 subscribers, the 1992 Cable Act clearly allows for such an exclusion and we believe one is warranted, regardless of the particular ownership of these systems, because: (i) the administrative burden and costs of the benchmark method applied to small systems far exceed any possible customer benefit; (ii) small systems, due to their geography, typically lack the alternative revenue sources which the benchmark method contemplates are available and implicitly presumes; (iii) small systems typically lack the economies of scale and thus the profitability which (again) the benchmarks implicitly presume; and (iv) small communities lack the resources to regulate cable rates under the Commission's regulatory scheme, preferring instead to regulate cable pricing and other aspects of service through intimate political oversight. And all of these characteristics occur regardless of ownership. Removal of these small systems from the rules would affect only about 3.6% of the cable subscribers, and yet it

systems exceed their benchmarks may decline, but no more so than dictated by the

2. Because the cable industry has always relied on GAAP and GAAP (and the courts) recognizes that the industry's intangible assets are an integral part of its overall asset structure, no distinction should be made, as to cost recovery, between "hard" assets and "soft" assets.

3. Plant extensions and improvements and system acquisitions have always been a part of the cable industry's business strategy and are integral to its future growth, in many cases in response to binding franchise obligations, and the COS rules should recognize this. This perspective contrasts with the practices of the telephone and utility industries whose services are necessities and involve public health and safety issues, and whose business strategies are not based on plant expenditures and property acquisitions.

4. The COS rules should recognize and compensate for operating losses incurred prior to the effective date of the regulations, and for a return thereon, otherwise operators will never be able to recover these investments and will effectively be subject to confiscation.

5. Income taxes, computed at the statutory corporate rate, should be a permissible cost, regardless of the actual form of ownership of the subject cable system. (Even though the cable industry uses both the corporate form of ownership and the partnership form, unlike the telephone and utility industries which employ only the corporate form, cable system income taxes should be computed using the statutory corporate rate in order to ensure comparable treatment among cable systems and with these other industries.)

6. An operator should have the prerogative of adopting the benchmark method for basic services and the COS method for cable programming services, or vice versa.

CERTIFICATE OF SERVICE

I, Magdalene E. Copp, a secretary of the law office of Ross & Hardies, do hereby certify that I have this 21st day of July, 1993, served by first-class mail, postage pre-paid, a copy of the foregoing "Comments on Petition for Reconsideration" to the following list of people.

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Magdalene E. Copp

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